

WILLIAM T. BEST

IBLA 81-735

Decided July 22, 1981

Appeal from decision of Montana State Office, Bureau of Land Management, declaring unpatented lode mining claims abandoned and void. M MC 48202 through M MC 48207.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

APPEARANCES: William T. Best, pro se.

William T. Best appeals the Montana State Office, Bureau of Land Management (BLM), decision of April 21, 1981, which declared six unpatented lode mining claims, identified as Red, White, Blue, Bee, Echo, and September, M MC 48202 through M MC 48207, abandoned and void because evidence of assessment work for the year ending September 1, 1980, had not been filed with BLM on or before December 30, 1980, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulation 43 CFR 3833.2-1.

Appellant asserts the document was mailed from Butte, Montana, on December 29, 1980. This is substantiated by the postmark on the envelope.

[1] The owner of an unpatented mining claim located on public land prior to October 21, 1976, must file with the proper BLM office by October 22, 1979, and on or before December 30 of each calendar year thereafter, a notice of intent to hold or proof of work performed on the claim during the preceding assessment year. 43 U.S.C. § 1744(a) (1976); 43 CFR 3833.2-1(a).

Failure to comply with the statutory requirements governing recordation of information relative to unpatented mining claims must result in a conclusive finding that the claim has been abandoned. Edward P. Murphy, 48 IBLA 211 (1980); G. H. Monk, 47 IBLA 213 (1980); 43 CFR 3833.4.

The Board has repeatedly held that a mining claimant, having chosen as his means of delivery the Postal Service, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Edward P. Murphy, *supra*; Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge